



Comptroller General
of the United States

Washington, D.C. 20548

A. Perry

Decision

Matter of: Minigraph, Inc.--Reconsideration
File: B-237873.3
Date: December 10, 1990

Gilbert J. Ginsberg, Esq., Epstein, Becker & Green, for the protester.

Jonathan H. Kosarin, Esq., Department of the Navy, for the agency.

Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's failure to notify contracting agency that it no longer had a business relationship with a subcontractor whose computer hardware was used by awardee during negotiations constituted a material misrepresentation warranting rejection of proposal is denied where solicitation did not require listing of subcontractors, subcontractors were not evaluated and there is no evidence that the awardee will not utilize similar hardware obtained from another source.

DECISION

Minigraph, Inc. requests reconsideration of our decision, Minigraph, Inc., B-237873.2, May 14, 1990, 90-1 CPD ¶ 470, in which we denied Minigraph's protest against the award of a contract to Computer-Aided Engineering Corporation (CAECOR) under request for proposals (RFP) No. N00189-88-R-0019, issued by the Naval Supply Center to acquire engineering and technical services. We denied the protest on the bases that CAECOR's corporate experience was properly evaluated, Minigraph was afforded meaningful discussions, and the award to CAECOR, the higher-priced, higher-technically rated offeror, was in accordance with the solicitation award provision which afforded greater weight to technical merit and did not provide that price would be determinative. Minigraph's request for reconsideration is limited to an issue concerning an alleged misrepresentation by the awardee, which Minigraph asserts we failed to address in our initial decision.

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We affirm the prior decision.

Minigraph contends that its initial protest submissions demonstrated that CAECOR: (1) proposed a computer system that lacked proven compatibility with the Navy's computer system; (2) misrepresented its capacity in this respect; and (3) eviscerated a mandatory work sample testing requirement under the RFP which was intended to assess compatibility. The protester refers to "evidence" it submitted which demonstrated that CAECOR no longer had access to the computer equipment which it had used in preparing a work sample that was required by the RFP to prove compatibility. Therefore, Minigraph argues that the work sample which CAECOR submitted was not a valid demonstration of CAECOR's ability to meet the Navy's compatibility requirement. Minigraph alleges that CAECOR was aware that it no longer had access to this equipment prior to its submission of a best and final offer (BAFO) and failed to so inform the Navy. Minigraph also alleges that the Navy was independently informed of CAECOR's discontinued access to the equipment yet improperly failed to eliminate CAECOR from the competition. Minigraph contends that the compatibility requirement is material and that the Navy's failure to eliminate CAECOR for failure to demonstrate satisfaction of the requirement constituted an improper waiver of a material solicitation requirement.

Since we did not specifically address this issue in our prior decision, we will do so here. Because award must be based on the requirements stated in the solicitation, Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96, an agency does not have the discretion to disregard an offeror's failure to satisfy a material RFP requirement in its proposal. Marisco, Ltd., B-235773, June 26, 1989, 89-2 CPD ¶ 8. Whether an offeror satisfies the material terms of a solicitation is in the first instance a decision of the contracting agency made during its technical evaluation of proposals. We will review an agency's technical evaluation to ensure that it was reasonable and consistent with the evaluation criteria contained in the RFP. Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83. Here, we find that the Navy did not waive the system compatibility requirement for CAECOR, which is the material RFP requirement in question.

The RFP required that offerors submit a work sample which consisted of a Part Database for two specific drawings and informed offerors that:

"This database will be evaluated on a strictly pass/fail basis as an indication that the proposed system is compatible with the government system and can be fully utilized/manipulated with no loss of entities or other associated problems caused by


equipment incompatibility. Strict adherence to the requirements for development of this database is mandatory and any deviation or omission of requirements could result in elimination of the offeror's proposal from consideration for award. If the proposed system is not fully compatible with the Government system, the offeror's proposal will not receive further consideration for award."
(Emphasis added.)

The purpose of this requirement for a work sample was to have each offeror demonstrate that the type of system it proposed to use would be fully compatible with the agency's automated system; the sample requirement does not, as the protester urges, require offerors to use the same items of equipment during contract performance that were used to produce the work sample. Here, CAECOR used a subcontractor's equipment to produce the work sample which CAECOR submitted with its initial proposal, and which passed the Navy's evaluation. There is no requirement in the solicitation that offerors use the same subcontractors during performance that they used during negotiations, nor is there a prohibition against the substitution of hardware during contract performance. Thus, CAECOR was not required to nor did it identify this subcontractor in its proposal, and this subcontractor was not evaluated by the agency as part of CAECOR's offer. Further, while Minigraph contends that CAECOR does not itself possess the equipment in question, Minigraph does not allege that CAECOR cannot acquire an identical system from a different vendor or subcontractor.

Minigraph has not shown that CAECOR made any material misrepresentation. Although CAECOR failed to notify the Navy of the subcontractor change, the record shows that Navy was in fact aware of this development, and we do not find that the agency misevaluated the proposal. CAECOR submitted a work sample that used a specific automated system which the Navy evaluated as compatible, and CAECOR is obligated to provide an automated system that performs in the same manner during the performance of its service contract. Hence, there is no basis to conclude that the Navy waived a material RFP requirement for CAECOR.

Minigraph also alleges that CAECOR has been unable to arrange a subcontractor to replace the one it lost and therefore will not be able to perform the contract. Whether CAECOR arranges for a subcontractor and performs the contract in accordance with the specifications is a matter of contract administration, which is the responsibility of the contracting agency, and not within the purview of our bid protest function.
Standard Mfg. Co., Inc., B-236814, Jan. 4, 1990, 90-1 CPD
¶ 14.

Since we have determined that the Navy did not misevaluate CAECOR's proposal or waive a material requirement for CAECOR, we find no basis to reverse our prior decision. Accordingly, the prior decision is affirmed.


for James F. Hinchman
General Counsel